

1 TYLER K. ALLEN (027161)
2 4201 NORTH 24TH STREET, SUITE 200
3 PHOENIX, ARIZONA 85016
4 TELEPHONE: (602) 456-0545
5 TYLER@ALLENLAWAZ.COM
6

7 IN THE SUPREME COURT OF THE STATE OF ARIZONA
8

9 IN THE MATTER OF:

R-15-0009

10 PETITION TO REPEAL THE RULES
11 OF PROCEDURE IN TRAFFIC
12 CASES AND BOATING CASES; TO
13 AMEND THE RULES OF
14 PROCEDURE IN CIVIL TRAFFIC
15 AND CIVIL BOATING CASES; and
16 TO AMEND RULES 1, 2, AND 3 OF
17 THE RULES OF CRIMINAL
PROCEDURE

THE TYLER ALLEN LAW FIRM'S
COMMENTS TO PETITION TO
REPEAL THE RULES OF
PROCEDURE IN TRAFFIC CASES
AND BOATING CASES; TO AMEND
THE RULES OF PROCEDURE IN
CIVIL TRAFFIC AND CIVIL
BOATING CASES; and TO AMEND
RULES 1, 2, AND 3 OF THE RULES
OF CRIMINAL PROCEDURE

18 Pursuant to Rule 28(D) of the Arizona Rules of the Supreme Court, we, the
19 undersigned attorneys of the Tyler Allen Law Firm, respectfully submit the following
20 comment for the Court's consideration.
21

22 The proposed rule changes, as proposed by Antonio F. Riojas, seek to clear up
23 ambiguities existing among two sets of rules currently governing civil traffic and civil
24 boating proceedings. The attorneys of the Tyler Allen Law Firm support efforts to
25 update the Rules of Civil Traffic and Civil Boating Cases while eliminating the
26 redundancy of the Rules of Traffic and Boating Cases. However, the proposed
27
28

1 amendment fails to address certain rights and procedural elements which we advocate
2 are necessary in the interests of justice, and support the fair and speedy resolution of
3 civil traffic and civil boating cases.
4

5 **A. Rule 10. Entry of Plea; Failure to Appear**

6 Rule 10 of the Rules of Procedure in Civil Traffic and Civil Boating cases
7 addresses procedural processes of entering a plea as well as sanctions imposed for a
8 defendant's failure to appear (AZ ST CIV TRAF Rule 10). The proposed amendment
9 fails to provide reference to representation by an attorney as provided in the original
10 Rule 7 of the Rules of Traffic and Boating which the new rule 10 is proposed to
11 replace. Rule 7 references a defendant's failure "to appear, personally or by counsel."
12 *Id.* Rule 11 of the Rules of Civil Traffic and Civil Boating Cases also states that a
13 defendant has the right to be represented by counsel at the civil traffic hearing so long
14 as the court and State are notified ten days prior to the scheduled hearing date.
15 However, the Rules do not recognize appearance by the defendant as satisfied when
16 represented solely by counsel.
17

18 As the proposed amendment references only the defendant being permitted to
19 appear personally, undersigned counsel suggests the amended Rule 10(c) also include
20 appearance by counsel or simply that a defendant may appear through counsel as
21 follows:
22

23 **10(c)** A defendant's failure to admit or deny responsibility under Rules
24 10(a) or 10(b), or to ~~personally~~ appear personally or by counsel at the
25
26
27
28

1 date and time specified in the Arizona Traffic Ticket and Complaint, or
2 at the date and time specified in a summons, or to appear at any
3 subsequently scheduled court proceeding, or a defendant's failure to file
4 a written statement prior to a documentary hearing under Rule 10.2, shall
result in a default pursuant to Rules 21 and 22.

5 Such an amendment particularly addresses the rights of defendants who reside
6 long distances from the court and those who wish to exercise their rights through
7 counsel.
8

9 **B. Rule 16. Oath and Questioning of Witnesses**

10 Rule 16 of the Civil Traffic and Civil Boating Cases is not addressed in the
11 proposed amendment to the Rules. However, Rule 16 fails to clarify the extent to
12 which the court may elicit testimony from a witness. Although the court should be
13 permitted to examine a witness of its own motion, the court should not elicit
14 testimony from a witness through questions in order to establish elements of the
15 offense where either party fails to do so on its own accord. The weight and burden of
16 evidence by either party prescribed by these rules become meaningless when the
17 court is permitted to meet that burden on behalf of either party through the use of
18 direct questions. Where the State waives its appearance, prescribed by Rule 12, the
19 court cannot and should not seek to establish the requisite testimony of the officer for
20 the sole purpose of sustaining a conviction.
21
22
23
24

25 The following proposed rule change to Rule 16(b) of the Civil Traffic and Civil
26 Boating Cases would limit the extent and purpose of direct questions by the Court:
27
28

1 **16(b)** The court may, on its own motion, call and examine witnesses,
2 including the defendant in cases other than those consolidated pursuant
3 to Rule 14 of these Rules. The court may not ask direct questions of the
4 witness for the purpose of establishing elements of the offense.

5 **C. Rule 9. Amending the Complaint and Rule 12. Representation By State**

6 Rule 9 of the Rules of Civil Traffic and Civil Boating provide the time and
7 manner by which a traffic complaint may be amended. Rule 12 describes that the
8 State waives presence of counsel at civil traffic hearings if a notice of appearance is
9 not filed ten days prior to a scheduled civil traffic hearing.
10

11 The proposed civil traffic rules fail to provide any guidance as to procedure for
12 stipulation between both parties. The criminal rules provide a defendant with the
13 opportunity to meet with representatives of the State prior to any trial or change of
14 plea proceeding. Conversely, in civil traffic hearings, a hearing is set following the
15 entering of a plea of not guilty at a defendant's arraignment. In cases where the
16 State's attorney waives its presence, the citing officer is the sole representative for the
17 State at the scheduled civil traffic hearings. Counsel proposes an amendment to the
18 Civil Traffic Rules to allow opportunity for a defendant to reach a resolution prior to
19 a civil traffic hearing by stipulation between the State's witness(es) and the Defendant
20 for approval by the Court.
21
22
23
24

25 In order to provide the citing officer the opportunity to amend the civil violation
26 prior to the hearing when necessary, Rule 9 and Rule 12 should reflect the following:
27
28

9(a) A court may amend a civil traffic complaint at any time before judgment if no additional or different violation is charged and if substantial rights of the defendant are not prejudiced, or by stipulation of the parties.

12 The State need not be represented by counsel at the hearing or appeal of a civil traffic complaint. Absent extraordinary circumstances, the State's right to be represented by counsel at the hearing is waived unless, at least 10 calendar days prior to the hearing date or within 10 calendar days of receipt of notice that the defendant will be represented by counsel, whichever is later, the State notifies the court and the defendant of its election to be represented by counsel. If the State is not represented by counsel, the state's witness may enter into a stipulation to amend or dismiss any of the charges listed in the complaint.

The suggestions proposed within this comment are an attempt to ensure the rights and processes currently afforded defendants in a civil traffic will not be eliminated with the proposed rule changes. The undersigned attorneys urge that the court delay adoption of these proposed rule changes unless the aforementioned comments are included in the new set of Rules for Civil Traffic and Civil Boating Cases.

Respectfully submitted this 20th day of May, 2015.

BY: /s/ TYLER K. ALLEN
TYLER K. ALLEN

Copies of the forgoing mailed
this 20th day of May, 2015 to:

Clerk of the Court
Arizona Supreme Court

Antonio F. Riojas, Jr., Chair
Committee on Limited Jurisdiction Courts
1501 West Washington St., Suite 410
Phoenix AZ 85007